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9
10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 AGASSI ENTERPRISES, INC., a Nevada
corporation,

13 Plaintiff,

14 v.

15 TARGET CORPORATION, a Minnesota
16 corporation,

17 Defendant.

CASE NO.:

COMPLAINT

(JURY TRIAL DEMANDED)

18 Plaintiff, Agassi Enterprises, Inc., for its complaint against Defendant, Target
19 Corporation, (“Target”) hereby alleges as follows:

20 **I. SUMMARY OF THE COMPLAINT**

21 1. This is an action for mark infringement and unfair competition under the Lanham
22 Act (15 U.S.C. § 1125(a)), common law mark infringement under Nevada law, and violation of
23 the Nevada Rights of Publicity pursuant to NRS 597.770 *et seq.*, arising from Target’s
24 unauthorized use of the mark AGASSI (the “Agassi Mark”) and wrongful use of the name,
25 image, likeness and other attributes associated with Andre Agassi (collectively, the “Agassi
26 Name” and together with the “Agassi Mark”, “Agassi Intellectual Property”).
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1 2. As a result of Target's willful and unauthorized use of the Agassi Mark, Target
2 has infringed, and continues to infringe, the protected mark rights in and to the Agassi Mark to
3 which Plaintiff Agassi Enterprises, Inc. ("AEI") holds an exclusive license. Further, Target's
4 wrongful use of the Agassi Name, also to which AEI has an exclusive license, was made
5 knowingly and without the written consent of AEI, such that AEI has been damaged.

6 3. AEI therefore seeks: injunctive relief; the recovery of actual and treble damages;
7 the recovery of Target's profits derived from Target's wrongful use of the Agassi Intellectual
8 Property; exemplary and punitive damages; the recovery of AEI's costs and attorney fees; and
9 such other relief as more fully set forth herein.

10 II. PARTIES

11 4. AEI is a Nevada corporation with a principal place of business located in Las
12 Vegas, Nevada.

13 5. Target is a Minnesota corporation with a principal place of business located in
14 Minneapolis, Minnesota.

15 III. JURISDICTION AND VENUE

16 6. Jurisdiction in this Court is proper over the First Claim for Relief pursuant to 15
17 U.S.C. §§ 1116 and 1121 and 28 U.S.C. §§ 1331 and 1338, as this claim arises under the
18 Lanham Act, 15 U.S.C. § 1051 *et seq.*

19 7. Jurisdiction in this Court over the Second and Third Claims for Relief is proper
20 pursuant to supplemental jurisdiction under 28 U.S.C. § 1367(a) because the Second and Third
21 Claims for Relief arise under Nevada law and are based upon a common nucleus of operative
22 facts with the First Claim for Relief, such that AEI would ordinarily be expected to try all claims
23 in a single judicial proceeding.

24 8. Personal jurisdiction over Target is proper as Target has had and continues to
25 have continuous and systematic contacts with the state of Nevada through, at a minimum,
26 Target's ownership and operation of multiple retail stores located throughout the state.
27 Furthermore, Target has purposefully directed its activities to residents of the state of Nevada,
28 which activities have resulted in the injuries to AEI as alleged herein. Target has engaged in

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1 intentional actions directed at residents of Nevada by and through Target's active and ongoing
2 sales of articles which infringe the Agassi Intellectual Property, and by and through Target's
3 active operation of the domain name www.target.com (the "Target Domain Name") and the
4 webpages accessible through the Target Domain Name (the "Target Webpages"), and the
5 infringement of the Agassi Intellectual Property resultant therefrom, all of which forum-related
6 actions Target knew or should have known would cause harm to AEI as alleged herein.

7 9. Target is registered to do business in the state of Nevada as a foreign corporation.

8 10. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2), as a
9 substantial part of the events giving rise to the claims at issue in this action occurred in this
10 judicial district.

11 **IV. GENERAL ALLEGATIONS**

12 11. Andre Agassi is one of the greatest professional tennis players of all time. He
13 captured eight Grand Slam titles, an Olympic Gold Medal, and is one of five players in the world
14 to win a career Grand Slam, or win all four Grand Slam titles—U.S. Open, Australian Open,
15 Wimbledon and French Open—in his career.

16 12. Andre Agassi began his more than twenty-year professional tennis career at age
17 16 in 1986 and is the first Nevadan to make an impact on professional tennis. He won his first
18 major championship at Wimbledon in 1992.

19 13. Throughout his career, Andre Agassi was in the public spotlight not only due to
20 his success as a tennis player, but also through his endorsement deals and television
21 commercials. Despite retiring from the game of tennis in 2006, Andre Agassi remains very
22 much in the public spotlight through his philanthropic efforts and business dealings, which
23 include the branding of the Agassi Name and Agassi Mark.

24 14. He is currently ranked third among the all-time ATP Prize Money Leaders.

25 15. The Agassi Intellectual Property has been sublicensed to companies such as Nike
26 and Adidas for global use to advertise, market and sell footwear and apparel.

27 16. Through the extensive use and sublicensing of the Agassi Intellectual Property,
28 considerable marketing and advertising of the Agassi Intellectual Property, and multiple channels

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1 of trade in which Agassi Intellectual Property is and will continue to be utilized, the Agassi
2 Intellectual Property has had such a significant impact upon a substantial part of the buying
3 public such that the buying public has come to recognize the Agassi Intellectual Property as a
4 symbol that identifies and distinguishes the goods and services associated with the Agassi
5 Intellectual Property.

6 17. Through the extensive use and sublicensing of the Agassi Intellectual Property,
7 considerable marketing and advertising of the Agassi Intellectual Property, and multiple channels
8 of trade in which Agassi Intellectual Property is and will continue to be utilized, the Agassi Mark
9 has acquired distinctiveness and secondary meaning, and the Agassi Name has acquired
10 significant publicity rights.

11 18. AEI owns the exclusive right to use and sublicense the Agassi Intellectual
12 Property by virtue of an employment agreement with Andre Agassi in 1994, which automatically
13 renews annually.

14 19. AEI is in the business of, among other things, using and sublicensing the Agassi
15 Intellectual Property.

16 20. AEI has used and sublicensed the Agassi Intellectual Property globally, and in
17 particular throughout the United States, in association with a variety of goods and services,
18 including, without limitation, footwear and apparel, for over ten years.

19 21. AEI has acquired substantial goodwill associated with the Agassi Intellectual
20 Property and the Agassi Intellectual Property has become associated in the marketplace with AEI
21 and Andre Agassi.

22 22. In or about June 2007, AEI first learned that Target had been offering for sale
23 sandals in association with the Agassi Intellectual Property (the "Infringing Articles"). Upon
24 information and belief, Target sold the Infringing Articles through Target's retail stores, the
25 Target Webpages and the webpages accessible through the domain name www.amazon.com (the
26 "Amazon Webpages"). Upon information and belief, Target continues to make available and/or
27 sell the Infringing Articles through Target's retail stores.
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1 23. Target's 2006 Annual Report states that on February 3, 2007, Target had one
2 thousand, four hundred and eighty-eight (1,488) retail stores throughout the United States and in
3 every state except Alaska, Hawaii and Vermont. As of the same date, Target operated fifteen
4 (15) stores within Nevada.

5 24. Upon information and belief, from the date Target first commenced sales,
6 advertising, marketing and promotion of the Infringing Articles, Target used and continues to use
7 the Agassi Intellectual Property to brand the Infringing Articles, and to advertise, market and
8 promote the Infringing Articles.

9 25. Target's uses of the Agassi Intellectual Property in commerce occurred well after
10 AEI acquired the rights to use and sublicense the Agassi Intellectual Property in commerce.

11 26. Target's uses of the Agassi Intellectual Property occurred and continue to occur
12 without the authorization or permission of AEI. Upon information and belief, the Infringing
13 Article is "Target's bestselling men's sandal."

14 27. On or about June 27, 2007, AEI demanded that Target cease and desist from any
15 uses of the Agassi Intellectual Property, and that Target affirmatively represent the means by
16 which it had discontinued such uses.

17 28. On or about July 27, 2007, Target, through its counsel, represented that the model
18 name was chosen for the Infringing Article consistent with Target's convention of using male
19 given names as model names for certain footwear.

20 29. On or about July 27, 2007, Target, through its counsel, represented that it had
21 discontinued its uses of the Agassi Intellectual Property by and through the Target Webpages and
22 Amazon Webpages, and that Target had taken affirmative steps to ensure that the Infringing
23 Articles were stripped of any references to the Agassi Intellectual Property, or were otherwise
24 relabeled so that any references to the Agassi Intellectual Property were unascertainable to the
25 consuming public.

26 30. On or about August 15, 2007, AEI acquired an Infringing Article from a Target
27 retail store located in Clark County, Nevada. Such Infringing Article used the Agassi Intellectual
28 Property in violation of AEI's rights in and to the Agassi Intellectual Property.

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1 31. On or about August 24, 2007, AEI acquired an Infringing Article through the
2 Amazon Webpages. Such Infringing Article used the Agassi Intellectual Property in violation of
3 AEI's rights in and to the Agassi Intellectual Property.

4 32. On or about September 3, 2007, AEI acquired an Infringing Article from a
5 different Target store located in Clark County, Nevada. Such Infringing Article used the Agassi
6 Intellectual Property in violation of AEI's rights in and to the Agassi Intellectual Property.

7 33. AEI does not know how many Infringing Articles were produced. However, on
8 information and belief, by Mid-August 2007, Target had sold approximately fifty-two thousand
9 five hundred eighty-nine (52,589) units of Infringing Articles for gross sales, which totaled
10 approximately six hundred sixty-one thousand one hundred eighty-four dollars (\$661,184.00).

11 34. Target's expansive retail outline chain presents a substantial risk that the
12 Infringing Articles remain for sale to the public.

13 35. Target's use and continued use of the Agassi Intellectual Property has and will
14 continue to have a direct impact on AEI's business and otherwise interfere with AEI's business
15 relationships with sub-licensees that pay significant sums to AEI for specific licensing rights to
16 AEI.

17 **V. CLAIMS FOR RELIEF**

18 **FIRST CLAIM FOR RELIEF**

19 **(Federal Mark Infringement and Unfair Competition (15 U.S.C. § 1125(a)))**

20 36. AEI hereby incorporates by this reference each and every allegation set forth
21 above as if fully set forth herein.

22 37. Target's use of the Agassi Mark in interstate commerce in connection with the
23 sale of the Infringing Articles, and the advertising, marketing and promotion made in support of
24 such sales, is likely to cause confusion, or to cause mistake, or to deceive, as to the affiliation,
25 connection, or association of such goods or services of Target with AEI, or as to the origin,
26 sponsorship, or approval of such goods, services or commercial activities of Target by AEI.

27 38. Target's uses of the Agassi Mark constitutes mark infringement and unfair
28 competition in violation of 15 U.S.C. § 1125(a).

1 39. As a result of the acts of Target as alleged herein, AEI has suffered and will
2 continue to suffer damages to its business, goodwill, reputation and profits, while Target profits
3 at AEI's expense.

4 40. The actions of Target as alleged herein, and the ongoing direct results of those
5 actions, have caused and will continue to cause great and irreparable harm to AEI in an amount
6 that cannot be ascertained, thereby leaving AEI with no adequate remedy at law.

7 41. Unless Target is preliminarily and permanently enjoined from infringing the
8 Agassi Mark, and from engaging in unfair competition, AEI will continue to suffer irreparable
9 harm.

10 42. By reason of the foregoing lack of an adequate remedy at law, AEI is entitled to
11 preliminary and permanent injunctive relief against Target pursuant to 15 U.S.C. § 1116.

12 43. AEI is also entitled to recover Target's profits derived from the unauthorized use
13 of the Agassi Mark, and any damages AEI has suffered by reason thereof.

14 44. Pursuant to 15 U.S.C. §§ 1117(a) and 1117(b), AEI is also entitled to an award of
15 treble damages, attorneys' fees, and costs, as Target's actions as alleged herein were willful,
16 egregious and otherwise exceptional, in association with Target's violations of 15 U.S.C. §
17 1125(a) with respect to the Agassi Mark.

18 **SECOND CLAIM FOR RELIEF**

19 **(Common Law Mark Infringement)**

20 45. AEI hereby incorporates by this reference each and every allegation set forth
21 above as if fully set forth herein.

22 46. Target's use of the Agassi Mark, including, but not limited to, sales of the
23 Infringing Articles and the advertising, marketing and promotion made in support of such sales,
24 is likely to cause confusion, or to cause mistake, or to deceive an appreciable number of
25 reasonable customers as to the affiliation, connection, or association of such goods or services of
26 Target with AEI, or as to the origin, sponsorship, or approval of such goods, services or
27 commercial activities of Target by AEI.
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1 47. Target's actions constitute mark infringement in violation of the common law of
2 the state of Nevada.

3 48. As a result of Target's actions as alleged herein, AEI has suffered and will
4 continue to suffer damage to its business, goodwill, reputation and profits, while Target profits at
5 AEI's expense.

6 49. Target's actions as alleged herein, and the ongoing direct results of those actions,
7 have caused and continue to cause great and irreparable injury to AEI in an amount that cannot
8 be ascertained, leaving AEI with no adequate remedy at law.

9 50. Unless Target is preliminarily and permanently enjoined by this Court from
10 infringing AEI's common law mark rights under Nevada law, AEI will continue to suffer
11 irreparable harm.

12 51. By reason of the foregoing, AEI is entitled to preliminary and permanent
13 injunctive relief against Target.

14 52. AEI is entitled to recover Target's profits derived from Target's unlawful uses of
15 the Infringing Mark, and any damages suffered by reason thereof, pursuant to Nevada law.

16 53. Target's actions constitute conduct of an intentional, willful and wanton nature.

17 54. AEI is also entitled to recover treble damages by reason of Target's infringement
18 of AEI's common law mark rights, as alleged herein.

19 55. AEI is further entitled to recover its costs and attorneys' fees as this is an
20 exceptional case.

21 **THIRD CLAIM FOR RELIEF**

22 **(Violation of Nevada Rights of Publicity (NRS 597.770 *et seq.*))**

23 56. AEI hereby incorporates by this reference each and every allegation set forth
24 above as if fully set forth herein.

25 57. AEI has the right of publicity associated with and through the Agassi Name.

26 58. Target has made and continues to make use of the Agassi Name without having
27 obtained the written consent of AEI. Such uses by Target are unauthorized and in violation of
28 the rights of publicity held by AEI in and to the Agassi Name.

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1 59. Target's actions constitute violation of the Nevada Rights of Publicity pursuant to
2 NRS 597.770 *et seq.*

3 60. As a result of Target's actions as alleged herein, AEI has suffered and will
4 continue to suffer damages while Target profits at AEI's expense.

5 61. Target's actions as alleged herein, and the ongoing direct results of those actions,
6 have caused and continue to cause great and irreparable injury to AEI in an amount that cannot
7 be ascertained, leaving AEI with no adequate remedy at law.

8 62. Unless Target is preliminarily and permanently enjoined by this Court from
9 infringing AEI's right of publicity in and to the Agassi Name, AEI will continue to suffer
10 irreparable harm.

11 63. By reason of the foregoing, AEI is entitled to preliminary and permanent
12 injunctive relief against Target pursuant to NRS 590.810(1)(a).

13 64. Target's actions constitute conduct of a knowing, intentional, willful and wanton
14 nature, made without the written consent of AEI.

15 65. AEI is also entitled to recover exemplary or punitive damages by reason of
16 Target's infringement of the Agassi Name, as alleged herein.

17 **VI. PRAYER FOR RELIEF**

18 WHEREFORE, AEI prays for entry of judgment and relief against Target as follows:

19 1. That Target shall be preliminarily and thereafter permanently enjoined and
20 restrained from use of the Agassi Mark in association with any goods or services including
21 without limitation the Infringing Articles, or ordering, directing, participating or assisting in any
22 such activities;

23 2. That Target be directed to file with this Court, and to serve upon AEI's counsel,
24 within thirty (30) days after entry against Target of any injunctive relief set forth herein, a report
25 in writing under oath setting forth in detail the manner and form in which Target complied with
26 said injunctive relief, pursuant to 15 U.S.C. § 1116(a);

27 3. That Target be enjoined from engaging in any of the unlawful and/or wrongful
28 actions as alleged herein, including, without limitation, unfair competition and mark

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1 infringement in violation of the Lanham Act, 15 U.S.C. § 1051 *et seq.*, mark infringement under
2 Nevada common law, or violations of Nevada Rights of Publicity pursuant to NRS 597.770 *et*
3 *seq.*;

4 4. That Target be ordered to provide an accounting of Target's profits derived
5 through any of the actions as alleged herein, including, without limitation, mark infringement
6 and unfair competition in violation of the Lanham Act, 15 U.S.C. § 1051 *et seq.*;

7 5. That AEI be awarded its actual, consequential and statutory damages permissible
8 under the law for Target's willful violation of AEI's trademark rights in and to the Agassi Mark;

9 6. That AEI be awarded treble damages by reason of Target's infringement of AEI's
10 common law mark rights, as such infringement was of an intentional, willful and wanton nature;

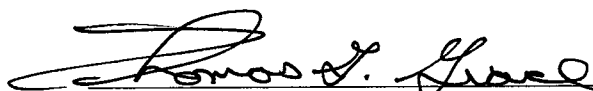
11 7. That AEI be awarded exemplary or punitive damages by reason of Target's
12 knowing violation of Nevada Rights of Publicity pursuant to NRS 590.770, *et seq.*

13 8. That AEI be awarded its reasonable costs and attorneys' fees based on Target's
14 willful, wrongful and exceptional actions as alleged herein pursuant to 15 U.S.C. §§ 1117(a) and
15 1117(b);

16 9. That AEI be awarded such other and further relief as this Court deems just and
17 equitable.

18 DATED this 14 day of September, 2007.

19 **SANTORO, DRIGGS, WALCH,**
20 **KEARNEY, HOLLEY & THOMPSON**

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